

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CRISTINA M. AZPILICUETA,

Plaintiff,

v.

REGIONAL TRUSTEE SERVICES
CORPORATION; ONE WEST FSB;
AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC.,

Defendant.

CASE NO. C11-5399RJB

ORDER ON EXPARTE MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

This matter comes before the court on plaintiff's Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction. Dkt. 4. The court has considered the relevant documents and the remainder of the file herein.

On May 26, 2011, plaintiff filed a complaint against Regional Trustee Services Corporation (RTSC), One West FSB (One West), and Mortgage Electronic Registration Systems, Inc. (MERS). Dkt. 1. The case involves a note and deed of trust related to real property, and a trustee sale apparently scheduled for June 3, 2011. Plaintiff alleges that

1 defendants violated the Washington Deed of Trust Act, RCW 61.24; the Real Estate Settlement
2 Procedures Act (RESPA), 12 U.S. C. §§ 2605 and 2607; the Fair Debt Collection Practices Act
3 (FDCPA), 15 U.S.C. § 1692; the Washington Consumer Protection Act (CPA), and RCW 19.86.
4 Dkt. 1. The complaint seeks a declaratory judgment, damages, and injunctive relief. Dkt. 1.

5 On May 27, 2011, plaintiff filed an "EX PARTE" motion for a temporary restraining
6 order and preliminary injunction, requesting that the court prohibit defendants from conducting
7 the trustee sale scheduled for June 3, 2011. Plaintiff has not filed a Certificate of Service
8 showing that any defendant has been served with a copy of the complaint or with a copy of the
9 motion for a temporary restraining order and preliminary injunction.

10 **1. Temporary Restraining Order**

11 Plaintiff requests that the court prohibit defendants from conducting the trustee sale,
12 scheduled for June 3, 2011.

13 The basic function of such injunctive relief is to preserve the *status quo* pending a
14 determination of the action on the merits. *Los Angeles Memorial Coliseum Com'n v. National*
15 *Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). A party "seeking a preliminary injunction
16 must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable
17 harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an
18 injunction is in the public interest." *Winter v. Natural Resources Defense Council*, 129 S.Ct. 365,
19 374 (2008). Alternatively, under the so-called sliding scale approach, as long as the party seeking
20 injunctive relief demonstrate the requisite likelihood of irreparable harm and shows that an
21 injunction is in the public interest, a preliminary injunction can issue so long as serious questions
22 going to the merits are raised and the balance of hardships tips sharply in the requesting party's
23 favor. *Alliance for Wild Rockies v. Cottrell*, 2010 WL 2926463 at *4-7 (9th Cir. July 28, 2010)

1 Federal Rule of Civil Procedure 65(b)(1)(A) requires that plaintiff "show that immediate
2 and irreparable injury or damage will result to the movant before the adverse party can be heard
3 in opposition."

4 Fed.R.Civ.P. 65(b)(1) provides as follows:

5 **(b) Temporary Restraining Order.**

6 **(1) Issuing Without Notice.** The court may issue a temporary restraining order without
7 written or oral notice to the adverse party or its attorney only if:

8 (A) specific facts in an affidavit or a verified complaint clearly show that
9 immediate and irreparable injury, loss, or damage will result to the movant before
10 the adverse party can be heard in opposition; and

11 (B) the movant's attorney certifies in writing any efforts made to give notice and
12 the reasons why it should not be required.

13 Plaintiff has not certified in writing any efforts she has made to give notice to defendants
14 of the motion for temporary restraining order, and the reasons why notice should not be required.
15 Further, plaintiff has not at this point shown that she is likely to succeed on the merits of her
16 claim. Nor has plaintiff shown that the balance of equities tips sharply in her favor. Plaintiff
17 does not allege that defendants erred in calculation of the payments made on her note, or that she
18 has actually made the payments pursuant to the note. It is not in the public interest to interfere
19 with ordinary business matters without notice, in the absence of strict and complete showing of
20 the justification for such interference. Accordingly, plaintiff's motion, requesting that the court
21 issue a temporary restraining order prohibiting the trustee sale scheduled for June 3, 2011, should
22 be denied.

23 **2. Motion for Preliminary Injunction**

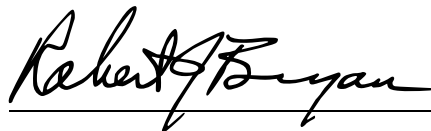
24 Plaintiff has moved for a preliminary injunction, requesting that the court enjoin the
trustee sale scheduled for June 3, 2011. Plaintiff noted this motion for May 27, 2011. Pursuant
to Local Rule CR 7(d)(3) of the Local Rules of the United States District Court for the Western

1 District of Washington, a motion for preliminary injunction shall be noted for consideration no
2 earlier than the fourth Friday after filing and service of the motion. Plaintiff has not yet filed
3 Certificates of Service, showing that defendants have been served with this motion for
4 preliminary injunction, let alone with copies of the complaint. Accordingly, the motion for
5 preliminary injunction should be denied without prejudice.

6 Accordingly, it is hereby **ORDERED** that plaintiff's Ex Parte Motion for Temporary
7 Restraining Order and Preliminary Injunction (Dkt. 4) is **DENIED** without prejudice.

8 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
9 to any party appearing *pro se* at said party's last known address.

10 Dated this 2nd day of June, 2011.

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13 ROBERT J. BRYAN
14 United States District Judge
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